



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2011

Mr. Benjamin V. Lugg
San Antonio Housing Authority
818 South Flores Street
San Antonio, Texas 78204

OR2011-03401

Dear Mr. Lugg:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 410969.

The Housing Authority of the City of San Antonio (the "authority") received a request for all proposals for solid waste collection, including best and final offers, recordings and minutes of a specified board meeting, specified evaluation forms, and specified e-mails or memos. You state some of the requested information will be made available to the requestor. You claim some of the remaining requested information is excepted from disclosure under sections 552.106, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the authority did not fully comply with section 552.301 of the Government Code. Subsection (b) of section 552.301 requires a governmental body requesting an open records ruling from this office to "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business-day after the date of receiving the written request." Gov't Code § 552.301(b). The authority states, and the submitted documents reflect, the authority received the request for information on December 14, 2010. Additionally, you inform us the authority was closed on December 23, 24, and 31, 2010. Accordingly, the tenth business day after the receipt of the request was December 30, 2010. Although you timely raised sections 552.117 and 552.137 of the Government Code, you did not raise section 552.106 of the Government Code until January 7, 2011. Generally, if a governmental body fails to timely raise an exception, that

exception is waived. *See generally id.* § 552.302; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Section 552.106 is a discretionary exception that protects a governmental body's interests and may be waived. *See Gov't Code* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). In failing to comply with section 552.301, the authority has waived its claim under section 552.106. Therefore, the authority may not withhold any of the submitted information under section 552.106 of the Government Code. However, we will consider the applicability of your timely-raised exceptions.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, the authority may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for information. You raise section 552.117 for a marked cellular telephone number. However, the marked cellular telephone number belongs to an individual who is not an employee of the authority. Therefore, this information may not be withheld under section 552.117(a)(1).

Section 552.137 of the Government Code provides in part:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

...

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent; [or]

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent[.]

Gov't Code § 552.137(a), (c)(1)-(2). Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). We agree the e-mail addresses you have marked, and the additional e-mail addresses we have marked, must generally be withheld under section 552.137, unless their owners consent to their disclosure.¹ However, to the extent these personal e-mail addresses fall under the exceptions listed under subsection 552.137(c), the marked e-mail addresses may not be withheld under section 552.137, and, as you raise no other exceptions, must be released along with the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

Ref: ID# 410969

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.